IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1516 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

G.S.R.T. CORPORATION - Appellant(s)
Versus
KOKILABEN AJITSINH D. MAKWANA & 4 - Defendant(s)

==========

Appearance :
MS MAYA DESAI FOR MR MD PANDYA for Appellant,
NONE for the Respondent Nos.1 to 5 though served.

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 30/04/2007

ORAL JUDGMENT

1. Mrs.Maya Desai, learned counsel for the appellant.

None for the respondents though served.

2. The appellant / non-claimant, being aggrieved by the Judgment and Award dtd.29/9/1989 passed in Motor Accident Claim Petition No.23 of 1986 by the learned Motor Accident Claims Tribunal (Main), Panchmahal, awarding a sum of Rs.2,50,000=00 (Rupees Two Lacs Fifty Thousand only) with interest at the rate of 12% per annum from the date of the application till realisation and award of the costs, is before this Court.

3. Short facts necessary for proper disposal of the appeal are that on 17/4/1985, deceased Ajitsinh Dalpatsinh Makwana was going towards Vavdi Khurd from Sevalia on Motor Cycle bearing No.GAF-6936, he was driving the Motor Cycle at a moderate speed on the left side of the road, when he came near Jay Hind Quarry, Timba Road, opponent No.1 came from opposite direction i.e. from Godhra side, the bus was very rash and negligent, it hit the deceased from the front, the deceased was thrown on the road, he received various injuries, the deceased Ajitsinh Dalpatsinh Makwana was taken to

Civil Hospital at Gandhinagar, but he was declared dead and after autopsy, body was handed over to the claimants.

4. It was submitted by each of the claimant that they had suffered loss for the monetary assistance etc. and as the deceased was young man of 42 years, he could survive for a period of 20 to 25 years more and at least could work for the claimants for a further period of 17 to 18 years, they were entitled to claim a sum of Rs.2,50,000=00 under the head of loss of earning. The appellant herein appeared before the tribunal and opposed the claim petition on many fold grounds, it was submitted that the driver / deceased was rash and negligent, he himself hit the bus and unfortunately died. It was also submitted that the deceased was not earning the amount as mentioned by the claimants.

5. The learned tribunal, after casting the issues, provided proper opportunity to the parties to lead evidence. The parties accordingly led the evidence.

The learned tribunal, after hearing the parties allowed the claim in toto, therefore, the non-applicant is before this Court.

6. Mrs.Desai learned counsel for the appellant submits that the learned tribunal was unjustified in awarding Rs.2,50,000=00, less appreciating that if the salary / income of the deceased was Rs.1590=00 per month, then certain deductions as expenses on the deceased were required to be made. It was also submitted that the learned tribunal erred in not appreciating that the driver of the offending vehicle was driving the vehicle on the left side of the road, the fact would be clearly visible from Exh.Nos.46 and 47 and in view of such findings, the claimants were not entitled to anything.

7. None appears for the respondents though the name of Mr.U.M. Shastri, learned counsel appears.

8. So far as the question of accident is concerned, the Tribunal has given cogent reasons for holding that

the driver of the bus was rash and negligent. It is also to be seen that the deceased under the circumstances could not hit the vehicle, but the fact would remain that the offending vehicle hit the deceased from the front.

9. Being in general in agreement with the findings recorded by the learned tribunal, I am of the opinion that the learned tribunal was justified in holding that the driver of the offending vehicle was rash and negligent.

10. So far as the deductions from the income of the deceased are concerned, this Court cannot forget that the deceased was drawing a sum of Rs.1590=00 at the time of his death and could earn total 2250=00 as his basic salary as on 31/12/1999. On the basic salary, the deceased would have also been entitled to certain allowances, including dearness allowance. Assuming that I take Rs.1590=00 as the basic figure and Rs.2250=00 plus dearness allowance, as the final figure, I will be justified in

holding that the deceased, with the change in the circumstances, could have earned more and as such his assumed salary would have been Rs.2000=00 per month, out which, I will deduct 1/4th share for the deceased, because present is a case where the deceased was required to maintain his wife and three children. Out of Rs.2000=00, if Rs.500=00 is deducted, the total dependency would be Rs.1500=00 per month and that exactly has been valued / calculated by the learned tribunal. On calculation of the said amount, applying multiplier of 15, the salary / loss of income would be Rs.2,70,000=00. If that be so, the learned tribunal was not unjustified in awarding a sum of Rs.2,50,000=00, specially when the tribunal did not grant anything towards cremation expenses and for loss of the company etc.

11. The appeal deserves to and is accordingly dismissed. No costs.

(R.S. GARG, J.)

rafik